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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 817

W. C. & A. N. MILLER DEVELOPMENT CO.,
Petitioner,

v.

EMMA PROPERTIES CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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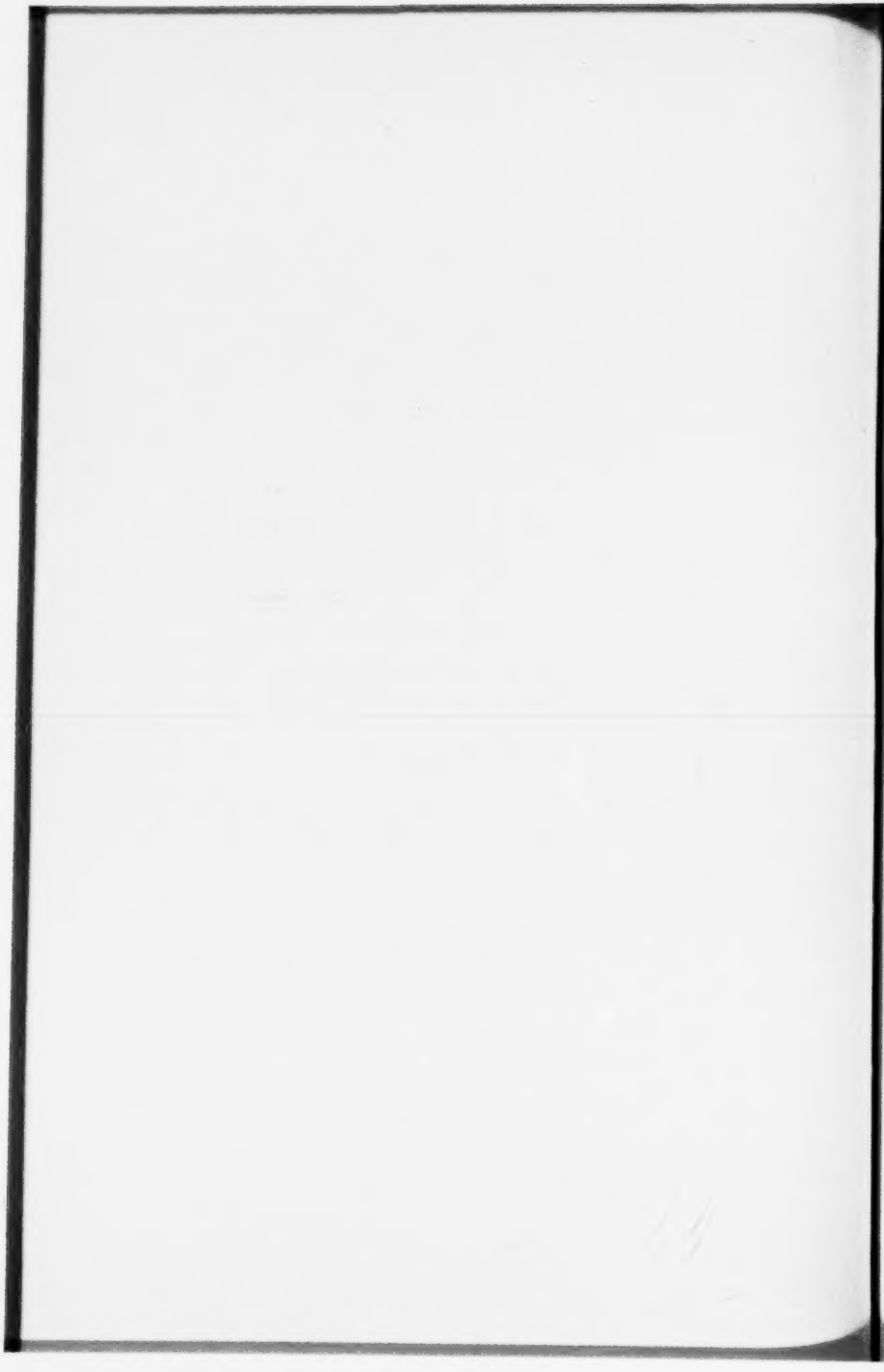

IN THE

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OCTOBER TERM, 1942.

No. .....

W. C. & A. N. MILLER DEVELOPMENT CO.,
Petitioner,

v.

EMIG PROPERTIES CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

PETITION.

The petition of W. C. & A. N. Miller Development Company respectfully represents:

STATEMENT OF THE MATTER INVOLVED.

First: By complaints filed in the District Court of the United States for the District of Columbia (R. 1-7 and R. 28-30) petitioner sought to have removed, as a cloud upon its record fee title to lots 21 and 22 in square 1476 in District of Columbia, a tax deed made by the Commissioners

of the District of Columbia which conveyed these lots to the Emig Properties Corporation in consideration of the payment by it of taxes assessed for the years ending June 30, 1931, and June 30, 1934, aggregating $14.91 (R. 4-5) upon the ground, inter alia, that the lots were not assessed on July 1, 1930 for the 1931 taxes in the names of their then record owners as required by the Act of Congress under which the assessment was made (R. 29); the contention being that Lot 21 should have been assessed in the names of the devisees of Mary J. B. Wright and Lot 22 should have been assessed in the names of the devisees of Martha L. Compbell, as required by the statute under which the assessment was made, their Wills being of record in the District of Columbia prior to July 1, 1930, the date the assessment was made.

The statute under which the attacked tax deed was given (Section 793, Title 20, page 255 of 1929 D. C. Code) provides that the tax deed "shall be admitted and held to be prima facie evidence of a good and perfect title in fee simple to any property bought at said sale herein provided for." But the law is that an invalid tax deed may be removed, for cause shown, as a cloud upon the record owner's title to property. *Kann* v. *King,* 25 App. D. C. 182.

Petitioner acquired the fee simple record title to these lots by purchase on September 10, 1935. Both lots are unimproved and in 1940 they were valued for taxation purposes at $1,325.00 (R. 36). Petitioner's title to Lot 21 was deraigned through the devisees of Mary J. B. Wright who got title by deed dated July 1, 1895, and recorded August 20, 1895, and who died seized thereof on March 13, 1921 (R. 33). Exemplified copy of her probated Will was filed in the Probate Court of the District of Columbia on March 21, 1930, whereby she devised the lot to her sister, Martha L. Campbell, for life, with remainder in fee to Kate Wertz Fleck and Harry S. Fleck, equally. Petitioner's record title to Lot 22 was deraigned through the devisees of Martha L. Campbell who got title thereto by deed dated May 11, 1895, and recorded May 14, 1895, and who died

seized thereof on December 1, 1918 (R. 33). Exemplified copy of her probated Will was filed in the Probate Court of the District of Columbia on March 21, 1930 (R. 51), whereby she devised the lot to her sister, Mary J. B. Wright, during her lifetime, with remainder in fee to Harry S. Fleck, as trustee, in trust for J. Hurst Campbell during his lifetime and upon his death to Kate Wertz Fleck, one-half, and the remaining one-half among the three children of Edith Wertz Irwin, deceased, namely, John Irwin, Gwendolyn Irwin and Lenore Irwin (R. 33). In connection with the above history of the titles, it is important to bear in mind three facts: (1) That Harry S. Fleck was a devisee named in each of the Wills; under one Will he acquired a half interest in Lot 21 while under the other Will he was trustee for the remaindermen of Lot 22; (2) that Mary J. B. Wright died March 13, 1921 and Martha L. Campbell died December 1, 1918, and (3) exemplified copies of their probate Wills were filed March 21, 1930, in the Probate Court of the District of Columbia.

Second: On July 1, 1921, for the taxes for the year ending June 30, 1922, the District of Columbia assessed Lot 21 in the name of Mary J. B. Wright *as owner* (she had then been dead since March 13, 1921), and assessed Lot 22 in the name of Martha L. Campbell *as owner* (she had then been dead since December 1, 1918). The irregularity of this assessment of the lots in the names of these deceased persons (*as owners*) was pointed out and asserted in the amended complaint (R. 28-29).

The Act of Congress under which the lots were assessed on July 1, 1921 for the taxes for the year ending June 30, 1922, reads:

> "All real property in the District of Columbia except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has

> otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed 'owner unknown.'" D. C. Code (1940) s. 47-701 (D. C. Code (1929) tit. 20, s. 696).

The 1922 taxes not having been paid by the owners of the lots, i.e., the devisees of Mary J. B. Wright and Martha L. Campbell, the lots were advertised for sale therefor in the names of Mary J. B. Wright and Martha L. Campbell, *as owners,* and bought in by the District of Columbia at the tax sale. And as the devisee-owners did not afterwards redeem the lots from the tax sale, the Commissioners of the District of Columbia, on April 23, 1929, sold and by deed conveyed them to James S. Fraser (R. 2).

If, under the aforesaid statute, the lots were *improperly* assessed for the 1922 taxes in the names of dead people, *as owners,* then the deed to Fraser was voidable and a cloud on the record title of the devisee-owners of the lots.

But without their questioning the validity of that assessment, Harry S. Fleck, who was co-owner of half interest in remainder in lot 21 under the Will of Mary J. B. Wright and the owner, as trustee, of lot 22, in remainder, under the Will of Martha L. Campbell (R. 33), obtained a deed dated November 7, 1929 from James S. Fraser for said lots (R. 2) which deed petitioner contended (R. 29) created no independent title in Fleck, and that whatever title he acquired through it enured to his co-owners as devisees under the Wills (R. 29). It was simply a redemption deed.

In the decision of this litigation in the Court of Appeals, Mr. Justice Rutledge said (mistakenly, however, in view of the allegation in paragraph thirteen of the amended complaint, R. 28):

> "It is not contended that there was any irregularity in the tax deed to James S. Fraser and his wife. It was proper for the Commissioners to assess the lots for the 1922 taxes in the names of deceased 'owners' because the Wills had not then been probated, and it is

not shown that the Commissioners were given notice of their deaths or who were the 'owners' under their Wills" (R. 55).

In thus reasoning and interpreting the aforesaid Act of Congress, the learned Justice ran counter to an applicable decision of his own court rendered in 1905 in the case of *Kann* v. *King,* 25 App. D. C. 182, where the Court of Appeals of the District of Columbia, in construing practically an identical statute, said:

> "The owner of the property involved in the present litigation was, and had been for upwards of twenty-five yeears, Mrs. Marianne A. B. Kennedy, who had inherited it in the year 1871 from a relative, Maria T. Gillis. On the assessment books of the District the property continued to be assessed in the name of Maria T. Gillis, although she had died in the year just named, and was advertised and sold in her name for default in the payment of taxes in the year 1899.
>
> "Now, it is very clear that this assessmenut did not comply with the requirement of the act of Congress. A deceased person cannot be the owner of property in the sense of the law. Especially cannot a deceased person continue for twenty-five years after his death to be the owner of property. Assessment and the other requirements of the tax laws are intended to warn the living owner that his property is being dealt with by the public authorities under their supreme power to devest title in the event of failure to pay the public dues; and that living owner is entitled to the benefit of that warning to its fullest extent, and to the most faithful compliance with the provisions of the statute. Washington v. Pratt, 8 Wheat. 681, 5 L. ed. 714. It will not do, therefore, to take a former owner, and continue his name until it suits the public authorities to change the assessment.
>
> "Provision is made by the statute, perhaps inadequate provision, for the ascertainment by the taxing officers of the names of the owners of property for this purpose of assessment; for the recorder of deeds and the register of wills are both required to report annually to the tax officers all transfers of real estate recorded in their respective offices. This does not seem

> to cover the case of devolution of title by descent, except apparently in the case of a division of an estate and the execution of deeds of partition by the several parties in interest; and it is not apparent what steps the taxing officers are to take to ascertain the living owners of property when the former owner has departed this life, and there is perhaps only one heir and no division of the estate. And yet the law specifically requires such ascertainment of ownership, for it specifically provides that the assessment in the name of the deceased person may not be continued beyond the partition of the estate, or until the estate 'has passed into the hands of some other person.' The new owner is such other person; and the taxing officers must ascertain his identity as best they can, if they would have their proceedings entirely valid and indefeasible. Such is the positive doctrine of the case of Washington v. Pratt. * * *."

The question of the validity or invalidity of the assessment for the 1922 taxes becomes very important upon the question of the ownership of the lots on July 1, 1930, when they became assessable for the taxes for the year ending June 30, 1931.

Were the lots then (July 1, 1930) owned by Fleck, as grantee under the Fraser deed, and therefore assessable in his name, or were they then *owned,* respectively, by the devisees under the respective probated Will of Mary J. B. Wright and Martha L. Compbell (exemplified copies of which had been previously filed in the Probate Court on March 21, 1930. See Section 18, Title 9, page 109 of 1929 D. C. Code for the effect of such filing) and therefore assessable in their names? These are really the pivotal questions in this case and the ones sought to have reviewed by certiorari.

Third: In assessing the lots on July 1, 1930, *under the aforesaid statute,* for the 1931 taxes, the District of Columbia did not assess Lot 21 in the names of the devisees of Mary J. B. Wright or Lot 22 in the names of the devisees of Martha L. Campbell—though their Wills were of record

in the District of Columbia—instead, the District assessed the lots in the name of the grantee (Fleck) under the Fraser quitclaim deed.

The 1931 taxes not having been paid by the devisee-owners of the lots, they were advertised for sale in the name of Fleck *as owner,* and for lack of bidders they were bought in by the District of Columbia (R. 4). Thereafter, by deed dated March 17, 1934, the Commissioners of the District of Columbia sold and conveyed the lots to the Emig Properties Corporation upon the payment of taxes of $14.91, as shown by the recitals in the tax deed (R. 21-24).

Fourth: Petitioner, in its amended complaint (R. 28-29) alleged that the assessment of the lots on July 1, 1930, for the 1922 taxes in the names of the former deceased owners, *as owners at that time,* was not a compliance with the aforesaid quoted Act of Congress.

And petitioner, in its amended complaint (R. 29) alleged that the assessment of the lots on July 1, 1930 for the 1931 taxes in the name of Fleck, *as owner at that time,* was not a compliance with the aforesaid quoted act of Congress.

Both assessments were made under the same statute.

The case came on for hearing in the District Court of the United States for the District of Columbia before Mr. Justice Morris who, on July 1, 1940, filed a memorandum (R. 32), made findings of fact and conclusions of law (R. 33-38), and entered a final decree dismissing the complaints on November 15, 1940 (R. 43). The judgment upon being superseded (R. 43), was appealed and judgment of affirmance was entered by the United States Court of Appeals for the District of Columbia on February 1, 1943 (R. 61).

JURISDICTION.

The judgment in question was entered by the United States Court of Appeals for the District of Columbia on February 1, 1943 (R. 61) pursuant to the decision of the District Court (R. 53). This Court has jurisdiction to re-

view the judgment under Section 240(a) of the Act of February 13, 1925, 43 Stat. 936.

THE QUESTIONS PRESENTED.

The questions presented are:

1. Whether the assessment of taxes made on July 1, 1921, for the year ending June 30, 1922, of Lot 21 in the name of Mary J. B. Wright (then deceased), and of Lot 22 in the name of Martha L. Campbell (then deceased) was a compliance with the aforesaid Act of Congress.

2. Whether the assessment of taxes made on July 1, 1930 for the year ending June 30, 1931, of Lot 21 in the name of Harry Fleck (tax deed), and of Lot 22 in the name of Harry S. Fleck, was a compliance with the aforesaid Act of Congress.

3. Whether the quitclaim deed made by James S. Fraser and wife to Harry S. Fleck, dated November 7, 1929, vested in Harry S. Fleck an independent new title, or did it inure to the benefit of his co-owners under the Wills.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI.

1. The action involves the interpretation of a Statute of the United States applicable to the District of Columbia, viz:

> "All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed 'owner unknown.'" D. C. Code (1940) s. 47-701 (D. C. Code (1929) tit. 20, s. 696).

2. The United States Court of Appeals for the District of Columbia, in its decision (R. 53-60), has decided an important real estate question of local federal law in conflict with the applicable decision of this Court in *Washington* v. *Pratt,* 8 Wheat. 681, 5 L. ed. 714.

3. The United States Court of Appeals for the District of Columbia, in construing the aforesaid Act of Congress, has decided an important question of local federal law in conflict with the Statute and an applicable decision of *Kann* v. *King,* 25 App. D. C. 182, *ante.*

4. The judgment of the United States Court of Appeals for the District of Columbia entered in this case upsets the settled interpretation of said Act of Congress as made by the United States Court of Appeals for the District of Columbia in 1905 in the case of *Kann* v. *King, supra.*

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court for review and determination, on a day certain to be named, a full and complete transcript of the record and all proceedings in the case numbered and titled on its docket No. 7802, W. C. & A. N. Miller Development Co., a corporation appellant, v. Emig Properties Corporation, appellee, and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

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a corporation,

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